

# **The Wildlife Protection Act 1972 (with Amendment Acts of 2003 and 2006)**





## Legislation Briefing Note

# The Wildlife (Protection) Act 1972 (with Amendment Acts of 2003 and 2006)<sup>1</sup>

This is an Act which provides for the protection of wild animals, birds and plants and matters connected with them, with a view to ensure the ecological and environmental security of India.

## 1. What does the Act cover?

This Act covers wildlife all over India except in the state of Jammu & Kashmir. The term 'wildlife' includes any animal, aquatic or land vegetation which form part of any habitat.

## 2. What authorities are constituted under the Act?

### At the Central Government level:

- A Director of Wild Life Preservation and other officers (Section 3).
- National Board for Wild Life with the Prime Minister as the Chairperson, with the following important functions (Section 5A and 5C):
  - Framing policies and advising Central and State Government on promotion of wildlife conservation and controlling poaching and illegal trade of wildlife and its products.
  - Making recommendations for setting up and managing national parks, sanctuaries and other protected areas.
  - Suggesting measures for improvement of wildlife conservation.
  - Preparing and publishing a statement report, at least once in 2 years on wildlife.
- A National Tiger Conservation Authority (See Part 9 below).
- A Tiger and Other Endangered Species Crime Control Bureau (Section 38Y & Z), with the following functions:
  - To collect intelligence related to organized wildlife crime activities and to disseminate the same to other enforcement agencies for action.
  - Coordinate actions of various officers, State Governments and other relevant authorities.
  - Implement obligations under various international agreements which are in force in India.

### At the State Government level:

- A Chief Wildlife Warden (CWLW), Wildlife Wardens, Honorary Wild Life Wardens and other officers (Section 4).
- A State Board for Wildlife, with the Chief Minister as the Chairperson, with the following key functions (Section 6 and 8):
  - Selection and management of protected areas.
  - Formulation of policy in granting license and permits.

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- Advice on measures to be taken for harmonizing the needs of the tribals and other forest-dwellers, with the protection and conservation of wildlife.
- Tiger Steering Committee and Tiger Conservation Foundation (See Part 9 below).

### 3. What are the provisions regarding hunting of wild animals?

Various species of wild animals are listed in 5 Schedules annexed to the Act. No hunting is permitted for any animal in Schedules I to IV, those in Schedule I and Part 2 of Schedule II (considered especially threatened) are given stronger provisions relating to trade and penalties. Schedule V is that of 'vermin', and hunting of animals listed therein is allowed under specified conditions.

Hunting of an animal in Schedules I, II, III & IV is allowed only when the CWLW is satisfied that such an animal has become dangerous to human life, or is disabled or diseased to an extent as to be beyond recovery (Section 9 and 11).

Hunting includes {Section 2 (16)}:

- Killing or poisoning of any wild animal or captive animal and every attempt to do so.
- Capturing, coursing, snaring, trapping, driving and baiting any wild animal or captive animal and every attempt to do so.
- Injuring or destroying or taking any part of the body of any such animal or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles.

The Act does not affect hunting rights of Scheduled Tribes of Nicobar Islands (Section 65).

### 4. Are there any provisions for protection of wild plants?

The Act provides for protection of 'specified' plants (listed in Schedule VI). No person is allowed to willfully pick, uproot, damage, acquire or collect any specified plant from forest land and area specified by the Central Government (Section 17A). A person may however do so on being granted a permit by the CWLW for educational and scientific purposes (Section 17B).

No-one is allowed to possess, sell, transfer or transport any specified plant, dead or alive. A member of a schedule tribe may however pick, collect or possess any specified plant in the district he resides, for his bona fide personal use (Section 17A).

No person will be allowed to cultivate a specified plant, or do business in it, except under a license (Section 17C & D).

### 5. What are the provisions regarding protected areas, and rights within these?

Five kinds of protected areas can be notified in the Act. Of these, four are dealt with below, and the fifth is a tiger reserve dealt with in Part 9. A comparison of the various provisions relevant to each of these four Protected Areas is given in Table 1. While the provisions below are regarding what a State Government can do, sanctuaries and national parks can also be notified by the Central Government (a power that has so far not been used).

## Sanctuaries

The State Government may by notification declare its intention to constitute any area as a sanctuary for protecting wildlife and the environment (Section 18).

The State Government will then appoint an Officer to act as the Collector within 30 days of issue of the notification, to determine the nature and extent of rights of persons in or over the land within the sanctuary (Section 18B).

The process of settlement of rights involves the following:

- An enquiry into the existence, nature and extent of the rights of any person in or over the land, comprised within the limits of the sanctuary (Section 19).
- No right can be acquired after this notification in or over the land within the limits specified, except by ordinary procedures of succession and will (Section 20).
- After the notification, the Collector shall, within a period of 60 days, publish in the regional language, in every town or village, or in the neighborhood of the sanctuary a proclamation which specifies (Section 21):
  1. The situation and the limits of the sanctuary.
  2. The requirement of any person claiming a right, to prefer before the collector within 2 months from the date of such proclamation, with a written claim specifying the nature and extent of such a right with details, and the amount and particulars of compensation claimed.
- The Collector shall inquire into any claim referred before him or existence of any right not claimed, on the basis of records of the State Government and the evidence of any person acquainted with the same (Section 22).
- The Collector then shall pass an order admitting or rejecting the claim. If the claim is admitted the collector may (Section 24):
  1. Exclude such land from the limits of the proposed sanctuary.
  2. Acquire such land or rights except where the owner has agreed to surrender his rights to the Government on payment of such compensation as is provided for in the Land Acquisition Act, 1984.
  3. Allow the continuance of any right in consultation with the Chief Wild Life Warden (CWLW).

The sanctuary may be finally notified once the above process is finished. All provisions of the Act including restrictions and prohibitions of various activities, will then apply.

Till the settlement process is finished, the State Government is to make alternative arrangements for fuel, fodder and other forest produce to the people affected (Section 18A).

The Act provides exemption from the settlement of rights process, to two kinds of areas: reserve forest and territorial waters. In the former, the assumption is that the process of declaring reserved forest under the Forest Act 1927 would have gone through a similar settlement process. In the latter, the State Government has to take adequate measures to protect the occupational interests of local fisherman; also the right of innocent passage of any vessel is not affected (Section 26A).

Prior concurrence of the Central Government has to be obtained by the State Government when any part of territorial waters is to be included in a protected area, and their limits are to be decided in consultation with the Chief Naval Hydrographer of the Central Government (Section 26A).

No person can enter or reside in a sanctuary, other than (i) a public servant on duty, (ii) a person permitted by the CWLW, (iii) a person who has right over immovable property within the sanctuary and the dependents of such persons, or (iv) a person passing through the sanctuary along a public highway (Section 27).



The CWLW can permit entry and residence in a sanctuary for investigation or study of wildlife, photography, scientific research, tourism, transaction of business with any person residing in the sanctuary (Section 28).

No person can enter a sanctuary with any weapon except with the previous permission of the CWLW (section 31). No person can set fire in a sanctuary or use any chemicals, explosives or other substances which may cause any injury to wildlife (Section 30 & 32).

No person shall destroy or remove any wildlife or produce or damage the habitat of any wild animal or divert stock or enhance the flow of water into or outside the sanctuary except with a permit granted by the CWLW. The State Government, in consultation with the State Wildlife Advisory Board has to determine that such a permit is necessary for the better management of wildlife. If any forest produce is removed for this purpose, it will go to local communities for their bonafide use and provided it is not for commercial purposes (Section 29).

The State Government is to set up an Advisory Committee for each sanctuary, which can render advice to the State Government for better conservation and management of the sanctuary. This will consist of the CWLW or his nominee (not below the rank of Conservator of Forests) as its head, a member of the State Legislature within whose constituency the sanctuary is located, 3 representative from Panchayati Raj Institutions, 2 representatives of NGOs, 3 individuals acting in the field of wildlife conservation, one representative each from Departments dealing with Home and Veterinary matters, the Honorary Wildlife Warden, and the officer in charge of the sanctuary as a member secretary (Section 33B).

### **National Parks**

The State Government may declare an area, whether inside a sanctuary or not, as a national park for the purpose of protecting and developing wildlife and its environment (Section 35).

With regard to settlement of rights, the same procedure as a sanctuary will be followed, except in such a case where a claim is admitted, the collector cannot allow the continuance of any right and will necessarily have to extinguish all rights {Section 35(3)}.

The State Government cannot alter the boundaries of a national park except on the recommendation of the National Board for Wildlife {Section 35(5)}.

No grazing is allowed inside a national park {Section 35(7)}.

All provisions applicable to a sanctuary are also applicable to a national park {Section 35(8)}.

### **Conservation Reserves**

The State Government after consultations with local communities can declare any area owned by the Government, particularly areas adjacent to national parks or sanctuaries, as conservation reserves (Section 36A).

The State Government then has to constitute a Conservation Reserve Management Committee to advise the CWLW to manage and conserve the conservation reserve. It will consist of a representative of the Forest or Wildlife Department, 1 representative of each Village Panchayat in whose jurisdiction the reserve is located, 3 representatives of NGOs working in the field of wildlife conservation, and 1 representative each from the Department of Agriculture and Animal Husbandry (Section 36B).

### **Community Reserves**

The State Government can, where the community or an individual has volunteered



to conserve wildlife, declare any private or community land<sup>2</sup> as community reserve.

A Community Reserve Management Committee shall be constituted by State Government for conserving and managing the reserve. It will have the power to prepare and implement management plans. The committee will consist of 5 representatives nominated by the Village Panchayat, and where a Panchayat does not exist, by the members of the Gram Sabha. It will also include one representative of the State Forests or Wildlife Department under whose jurisdiction the community reserve falls (Section 36D).

There shall be no change in the land use pattern within a community reserve except in accordance with a resolution passed by the Management Committee with the approval of the State Government (Section 36C).

## 6. How does the Act regulate tourism?

The CWLW can permit entry and residence in a sanctuary for tourism (Section 28). No construction of commercial tourist lodges, hotels, zoos and safari parks will be undertaken inside a sanctuary or national park except with the approval of National Board for Wildlife (Section 33). The CWLW has the powers to regulate tourism in ways that are appropriate for protection of wildlife.

## 7. How does the Act regulate trade or commerce in wild animals and animal articles?

Every wild animal other than vermin killed in contravention of this Act, or any animal article or trophy found in contravention of this Act, or ivory imported or article made from ivory in contravention of this Act, shall be the property of the State Government and if the said contravention to the Act occurs in a sanctuary or a national park declared by the Central Government, then the killed animal/article or trophy under discussion shall be the property of Central Government (Section 39).

Every person having control or custody of any captive animal specified in Schedule I or Part II of Schedule II or animal trophy or article derived from such animal or the musk of deer or the horn of rhinoceros has to declare this to the CWLW, and sell or transfer it only with written permission of the CWLW (Section 40). A Certificate of Ownership is needed for any such possession (Section 42).

A license is needed for any business in animal articles (other than for peacock tail feathers) (Section 44). No such business is allowed for animals in Schedule I or Part 2 of Schedule II (Section 48).

## 8. What are the provisions for prevention and detention for offences?

Any authorised official has the power to inspect, require persons to show plants or animals, stop vehicles/vessels and issue search warrants if he has reasonable ground to believe that the persons concerned have committed an offence against this Act (Section 50). Fisherpersons who inadvertently enter a protected area are exempt from this.

<sup>2</sup> The term 'community land' has not been defined, and it is not clear whether government lands on which communities have had customary rights, would come under it, or whether it is restricted to lands owned by communities.



Penalties for violating the Act range from imprisonment up to a period of seven years, and/or fines upto Rs. 25,000 (Section 51). When an offence is committed by a company, every person who at the time of the offence was in charge and responsible for the conduct of the company, as well as the company, will be liable for the offence (Section 58).

The State Government may give the CWLW the power to reward informants with upto Rs. 10,000 (Section 60B).

## 9. What are the special provisions regarding Tiger Reserves?

A National Tiger Conservation Authority (NTCA) has come about due to The Wildlife (Protection) Amendment Act, 2006. The Central Government shall constitute this body with the Minister for Environment and Forests as the Chairperson (Section 38L).

The powers and functions of the NTCA are to (Section 38O):

- Approve Tiger Conservation Plans prepared by the State Governments.
- Disallow ecologically unstable land use within tiger reserves.
- Provide for measures to address conflicts of humans and wild animals, and to emphasize on coexistence in forest areas.
- Provide information on protection measures including future conservation plans in tiger reserves.
- Coordinate research and monitoring on tiger and its habitat.
- Ensure that tiger reserves and areas linking one reserve with another are not diverted for ecologically unsustainable use except in public interest and with the approval of the National Board for Wildlife.

The Tiger Conservation Authority can issue directions for the protection of tigers and reserves, but such directions should not interfere with the rights of local people, particularly Scheduled Tribes {Section 38O (2)}.

Each State Government will constitute a Steering Committee with the Chief Minister as the Chairperson for ensuring conservation of tigers (Section 38U). It will also establish a Tiger Conservation Foundation for tiger reserves to facilitate the conservation of tigers (Section 38X).

The State Government on the recommendation of the Tiger Conservation Authority may notify an area as a tiger reserve, for which it has to prepare a Tiger Conservation Plan. In this Plan it has to ensure the agricultural, developmental, livelihood and other interests of the people living in tiger bearing forests or reserves (Section 38V).

In a tiger reserve the Scheduled Tribes and other forest dwellers can be relocated or their rights can be curtailed only on mutually agreed terms and only when a set of stringent conditions have been satisfied. The conditions are ({38V(5)}):

1. The process of recognition and determination of rights is completed.
2. It is established that the presence or activity of the Scheduled tribes or other forest dwellers living in the area cause irreversible damage and threatens the existence of the tiger and its habitat.
3. It is established that other reasonable options of coexistence are not available.
4. A resettlement or alternative package has been prepared which fulfills the requirements of the National Relief and Rehabilitation Policy and has the informed consent of the concerned gram sabha and of the affected persons.



The Act also says that the existing rights of the concerned Scheduled Tribes and other forest dwellers cannot be interfered with till the facilities and the land allocation at the resettlement location are provided (Section 38V (5)).

The State Government cannot de-notify a tiger reserve except in public interest and with the approval of the Tiger Conservation Authority and National Board for Wildlife (Section 38W).





Table 1. Comparison of key provisions of the Act as relevant to each PA category

| Provision  | Sanctuaries   | National Parks   | Conservation Reserves | Community Reserves   |
|--|---|--|-----------------------|--|
| Settlement of rights   | Carried out by a settlement officer; can allow or reject the claims, determine compensation, recommend change in boundaries, continuance of rights may be allowed by settlement officer in consultation with the CWLW | Same as a sanctuary except no continuance of any right is allowed. | Nothing mentioned     | Nothing mentioned; presumably left to community decision as management plans and decisions are with the community reserve management committee |
| Restriction on destruction or removal of any wildlife or forest produce, damage to wildlife habitat, or diversion of water | Applicable  | Applicable   | Not mentioned         | Not mentioned; presumably left to community decision   |
| Restriction on entry   | Permission of CWLW required except for special categories mentioned   | Same as sanctuaries  | Not mentioned         | Not mentioned, presumably left to community decision   |
| Grant of permit  | As mentioned above  | Same as sanctuaries  | Not mentioned         | Not mentioned, presumably left to community decision   |

|   |  |                     |   |  |
|---|--|---------------------|---|--|
| Alteration of boundaries  | By State Government on recommendation of National Wildlife Board | Same as sanctuaries | Not mentioned                             | Not mentioned  |
| Ban on causing fire   | Applicable   | Applicable          | Applicable                                | Applicable   |
| Ban on use of injurious substance   | Applicable   | Applicable          | Applicable                                | Applicable   |
| Prohibition of entry with weapon  | Applicable   | Applicable          | Not mentioned                             | Not mentioned, presumably left to community decision |
| Construction of commercial tourist lodges, hotels, zoos and safari parks, only with approval of National Wildlife Board | Applicable   | Applicable          | Not mentioned                             | Not mentioned, presumably left to community decision |
| No grazing of livestock   | Not mentioned  | Applicable          | Not mentioned                             | Not mentioned, presumably left to community decision |
| Immunization of livestock against communicable disease within 5 kms of protected area                                   | Applicable   | Applicable          | Not mentioned                             | Not mentioned, presumably left to community decision |
| Management and planning decisions   | Forest Department  | Forest Department   | Conservation Reserve Management Committee | Community Reserve Management Committee               |



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